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Supreme Court of the United States

..... TERM, 197....

No. 73-1792

JIMMY B. WILLIAMS, PETITIONER,

versus

STATE OF SOUTH CAROLINA, RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

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Supreme Court of the United States

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JIMMY B. WILLIAMS, PETITIONER,

versus

STATE OF SOUTH CAROLINA, RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

Petitioner prays that a Writ of Certiorari issue to review the Judgment of the Supreme Court of the State of South Carolina in the above case.

CITATION TO OPINION BELOW

The opinion of the Supreme Court of the State of South Carolina on the .... page of the Appendix.

JURISDICTION

The judgment of the Court of General Sessions of Fairfield County South Carolina was affirmed by the Supreme Court of the State of South Carolina on February

11, 1974. Rehearing was denied March 4, 1974. The jurisdiction of this Court is invoked under 28 U. S. C. Section 1257 (3), petitioner having asserted in the Courts below, rights, privileges and immunities conferred by the Constitution of the United States of America.

QUESTION INVOLVED

Whether due process of law and the right to be secure against unreasonable search and seizure, as guaranteed by the Fourth and Fourteenth Amendments of the United States Constitution was denied petitioner by the receipt into evidence of contraband obtained from petitioner's residence by police officers through an invalid and improper search warrant.

STATEMENT OF CASE

This matter involves a trial in the Court of General Sessions for Fairfield County South Carolina in which the petitioner was charged with possession of a large quantity of hashish and/or bricks of marijuana. The sole question involved is the sufficiency and validity of the affidavit supporting a search warrant and the validity of the search warrant. It is the contention of the petitioner that the affidavit lacked probable cause upon its face; that the search warrant was therefore improvidently and illegally issued; and that the evidence seized pursuant to the authority of the search warrant was improperly admitted into evidence upon the trial. At an early point during the trial, the question of the sufficiency of the affidavit and the validity of the search warrant was raised by the petitioner, and the trial judge held a parenthetic evidentiary hearing to determine the question. The petitioner would show that through this evidentiary hearing, and upon the face of the affidavit itself, there was a total failure of sufficient probable cause to justify the issuance of the search warrant and

it then follows that the contraband seized was improperly admitted into evidence.

The matter was submitted to the jury and the petitioner was found guilty. He was sentenced to serve a term of three (3) years and the appropriate appeal was taken to the Supreme Court of the State of South Carolina, wherein the lower court's ruling was affirmed. A Petition for Rehearing was denied.

REASON FOR GRANTING THE WRIT

The petitioner was denied due process of law and was subjected to an illegal search and seizure in violation of the rights guaranteed by the Fourth and Fourteenth Amendments of the Constitution of the United States, by the receipt of evidence seized pursuant to an unlawful and illegal search warrant.

An officer of the State appeared before a recently elected lay magistrate (one with no legal training) and presented an affidavit in which he requested the issuance of a search warrant. The body of the affidavit is, as follows:

> The undersigned being duly sworn deposes and says:
>
> That he has reliable information and reasonable cause to believe that **Jimmy Williams, Jaye Hayes** possesses **marijuana, a controlled substance,** in violation of the possessed property is located or concealed in **Route 2, Box 193, Ridgeway, S. C. a large two-story unpainted house between Willie Raines at Simpson,** in Fairfield County, State of South Carolina, and **C. Less Spirwell** on or near **just off Hwy. 34 at Simpson.**
>
> The facts which establish the reasonable grounds for issuance of a search warrant are as follows: **That confidential and reliable source of information tells Lt. T. E. Clark, Richland County Sheriff's Narcotic Squad that there is now a large quantity of marijuana at the above described location. The informant knows this because the person who possessed this marijuana told**

the informant about it and where he had it stored. The above mentioned persons are also known to Lt. Clark as dealers of marijuana. The informant has talked with the subject who owns this marijuana and been told where it was within the past three days.

Pursuant to the affidavit the magistrate issued a search warrant, empowering the police officer to search the premises of the petitioner. This search warrant was based upon authority issued by Section 17-271 of the 1962 Code of Laws for the State of South Carolina, the pertinent part of which is as follows:

> "If the magistrate—is satisfied that the grounds for the application exist or **that there is probable cause to believe that they exist,** he shall issue a warrant—" (Emphasis added.)

Upon the trial of the matter, the officer was asked whether or not the magistrate had examined him on the sufficiency of the affidavit and whether or not the magistrate tested the reliability of the informant. The questions asked of the officer and his answers are, as follows:

> "Q. What questions did the magistrate ask you about the matter?
>
> A. I don't recall any specific questions. I made the statement to him that I just made here.
>
> Q. Did he cross examine you or examine you on this statement you made?
>
> A. I believe he asked me if I knew who lived in the house?
>
> Q. And that was it?
>
> A. As far as I remember, yes, sir.
>
> Q. Now, the reliability of the informer, you told the Court that you had secured one arrest based upon information reported by this informer?
>
> A. Yes.
>
> Q. You have secured no conviction?
>
> A. No, sir, no conviction at this point.

Q. Had you had any other dealings other than that with this informer that resulted in convictions?

A. That was the only one, no convictions.

Q. Was the information the sole information you have expressed in this affidavit for a search warrant?

A. Yes, sir.

Q. That someone had told him or had talked to him you say the informer knows this because the person who possesses this marijuana told the informer about it and where he had it stored, is that correct?

A. Yes, sir."

Subsequently, the State, in the parenthetic evidentiary hearing, placed on the stand the magistrate, and he was examined as follows:

"Q. Lt. Clark has told us, I know you were not here, that he told you only, that he explained that he had made an arrest previously based upon information from this same informant; that was about the extent of what he told you?

A. Yes, sir.

Q. Did you independently inquire as to any other facts concerning the reliability of this informant?

A. I asked him, I say you must have a good lead. It kinda excited me about it; how in the world did they find out about it somewhere up here in the country.

Q. So, judge, what you were doing then, you were taking Lt. Clark's word for the reliability of the informant based upon one prior arrest that he had made relying on this informant, is that what it amounts to?

A. Really, that's true.

Q. Did you ask any other independent questions other than that about who the informant was first, did you ask who he was?

A. No, sir.

Q. Did you ask his age or occupation?

A. No, sir.

Q. Did you ask how he had acquired the information?

A. He told me it was voluntarily told to him.

Q. He didn't go into any details other than that?
A. No, sir."

The Fourth Amendment to the Constitution of the United States and Article 1, Section 16 of the Constitution of the State of South Carolina are identical and are, as follows:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

It might be well to consider first the pertinent federal decisions and probably the leading case would be that of *Aguilar v. Texas* (1964), 378 U. S. 108. In this matter, the United States Supreme Court struck down a state search warrant issued on the basis of an affidavit which, in substance was:

> "Affiant has received reliable information from a credible person and do believe that—drugs—are on the described premises."

The Court set down a two (2) pronged test for establishing probable cause. The affiant must provide the magistrate with underlying circumstances showing the informant to be credible and his information reliable. These inquiries are separate and distinct, and both must be separately satisfied before probable cause is shown.

Spinelli v. U. S., 394 U. S. 410, 89 S. Ct. 584 defined with more authority the principle set forth in *Aguilar*. In substance they added to *Aguilar* by setting forth that there must be independent corroboration of the tip or informant's information so as to implement the first two (2) prongs of *Aguilar*. The magistrate must be the neutral detached person to independently arrive at the probable

cause and he must never rely upon the bare assertion of the affiant in determining probable cause. In determining credibility the court held that though the affiant swore that his confidant was reliable, he offered the magistrate no reason in support of this conclusion. The bare credibility or reliability provided in the instant case is the supporting fact of one arrest and no conviction by the alleged informant. We call the Court's attention to the statements of both Clark and Magistrate Peake in support of this.

The applicable proposition of law as it pertains to the instant case is most aptly set forth in *Spinelli* (*supra*):

> "The detail provided by the informant in *Draper United States,* provides a suitable benchmark. While Hereford, the FBI's informer in that case, did not state the way in which he had obtained his information, he reported that Draper had gone to Chicago the day before by train and that he would return to Denver by train with three ounces of herion on one of two specified mornings. Moreover, Hereford went on to describe, with minute particularity, the clothes that Draper would be wearing upon his arrival at the Denver Station. A magistrate, when confronted with such detail, could reasonably infer that the informant had gained his information in a reliable way. Such an inference cannot be made in the present case."

The affidavit must stand or fall on the matter contained in the affidavit and cannot be bolstered or added to by subsequent testimony. This matter was before the Court in *Giordenello v. U. S.* 357 U. S. 480:

> "If an affidavit is the only matter presented to the issuing magistrate, as in this case, the warrant must stand or fall solely on the contents of the affidavit. What is subsequently adduced at a hearing on a motion to suppress, therefore, cannot be used by the trial court to augment an otherwise defective affidavit. But if the hearing discloses matters which discredit or impeach the assertions in an affidavit, these must be con-

sidered by the trial court in determining whether probable cause in fact existed."

In *Aguilar v. Texas*, 378 U. S. 108, the Court held:

"Although an affidavit may be based on hearsay information and need not reflect the direct personal observation of the affiant, * * * the magistrate must be informed of some of the underlying circumstances from which the informant concluded that the narcotics were where he claimed they were, and some of the underlying circumstances from which the officer concluded that the informant, * * * "credible" or that his information "reliable".'

SUMMARY

The question herein presented is of obvious importance to the administration of justice and the conduct of criminal investigation. The record of this case clearly shows a violation of due process in several areas of the proceedings and these departures from due process go to the very heart of the fundamental foundation required in the conduct of criminal justice. The decision of the Court below is believed to be erroneous. The petitioner has asserted in the Courts below, and is asserting here, rights guaranteed to the petitioner by the Constitution of the United States of America and is of the opinion that he has shown violations of these rights. It is obvious from the record that the petitioner would not have been convicted, had illegally seized evidence not been admitted into evidence. It is also obvious that this evidence was secured by the state police in violation of the rights and guarantees afforded petitioner by the United States Constitution. Unless *Certiorari* is granted by this Court, the rights of petitioner will stand as violated and this can only be remedied by this Court applying its standard of measurement to the illegal evidence used against him in the courts below. The establishment of uniform requirements of due process to

insure proper adjudication of criminal justice in state criminal trials warrants remedial action by this Court.

CONCLUSION

For the foregoing reason, this Petition for Writ of Certiorari should be granted.

KALE R. ALEXANDER,
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Attorney for Petitioner.

May 22, 1974.
Of Counsel:

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1610 Bull Street,
Columbia, South Carolina 29201.

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

THE STATE, Respondent,

versus

JIMMY B. WILLIAMS, Appellant

APPEAL FROM FAIRFIELD COUNTY
George T. Gregory, Judge

Opinion No. 19769
Filed February 11, 1974

AFFIRMED

Kale R. Alexander, of Columbia, for appellant.

Solicitor William Hare, of Chester; and Assistant Attorney General Dudley Saleeby, Jr., of Columbia, for Respondent.

MOSS, C. J.: Jimmy B. Williams, the appellant herein, was tried and convicted at the 1973 June Term of the Court of General Sessions for Fairfield County, South Carolina, for unlawfully having in his possession 69.7 pounds of marijuana, a controlled substance, with intent to distribute the same, in violation of Section 32-1510.49 of the Code. The appellant prosecutes this appeal from his conviction and sentence.

It is the contention of the appellant that the only evidence against him, sufficient to support a conviction, was obtained by virtue of a search warrant issued in violation of Article I, Section 16, of the 1895 Constitution of South

Carolina, and the Fourth Amendment to the Constitution of the United States. The appellant challenges the sufficiency of the affidavit for the search warrant on the ground that it was devoid of any proof or showing of probable cause and hence would not support the issuance of a legal search warrant. The appellant argues that the warrant under which the search of his premises was conducted should have been quashed and the evidence obtained as a result thereof suppressed.

Article I, Section 16 of the Constitution of South Carolina, and the Fourth Amendment to the United States Constitution, are identical and read as follows:

> "Searches and seizures—The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized."

Section 17-271 of the 1962 Code of Laws, as amended, provides that a search warrant for unlawful drugs shall be issued upon affidavit establishing the grounds for the warrant and sufficient facts must be stated in the affidavit to form the basis of a judgment by the issuing officer that probable cause exists. *State v. York,* 250 S. C. 30, 156 S. E. (2d) 326.

In order to justify the issuance of a search warrant, probable cause must be shown, but the term "probable cause" does not import absolute certainty. In determining whether there is sufficient evidence to sustain a finding of probable cause, each case stands on its own facts. The evidence need not be sufficient to support a conviction, or a verdict of guilty, or to establish guilt beyond a reasonable doubt; nor need the proof be positive, it being enough if it is such as to induce in the mind of the issuing officer an honest belief that the facts set forth exist, or as would lead a man of prudence to believe that the offense has been committed. *State v. Bennett,* 256 S. C. 234, 182 S. E. (2d) 291.

The appellant seeks a reversal of his conviction relying principally on the cases of *Aguilar v. Texas,* 378 U. S.

108, 84 S. Ct. 1509, 12 L. Ed. (2d) 723, and *Spinelli v. United States*, 393 U. S. 410, 89 S. Ct. 584, 21 L. Ed. (2d) 637. The appellant asserts that the affidavit upon which the search warrant was issued was insufficient in that it did not state the underlying circumstances constituting probable cause for the issuance of the warrant as required by the test set out in *Aguilar* and later explained and referred to as a "two-pronged test" in *Spinelli*.

In *Aguilar* the test for determining probable cause in those many instances where the affidavit is based solely or substantially upon an informant's tip was set forth as follows: (1) the affidavit must describe some of the underlying circumstances necessary to enable a neutral and detached magistrate to judge the validity of the informer's conclusion that the narcotics were where he claimed they were; (2) the affidavit must describe some of the underlying circumstances from which such magistrate can determine that the affiant officer's unnamed informant, whose identity need not be disclosed, was credible or his information reliable. In *Spinelli* it was held that in the absence of a statement by the informer detailing the manner in which he gathered his information, it is especially important that he describe the accused's criminal activities in sufficient detail that the magistrate may know that he is acting on something more substantial than a casual rumor circulating in the underworld or the accused's general reputation.

In the *Aguilar* case, a portion of which was quoted in our *York* case, it is said:

> "Although an affidavit may be based on hearsay information and need not reflect the direct personal observations of the affiant, *Jones v. United States*, 362 U. S. 257, 4 L. Ed. (2d) 697, 80 S. Ct. 725, 78 A. L. R. (2d) 233, the magistrate must be informed of some of the underlying circumstances from which the informant concluded that the narcotics were where he claimed they were, and some of the underlying circumstances from which the officer concluded that the informant, whose identity need not be disclosed, see *Rugendorf v. United States*, 376 U. S. 528, 11 L. Ed. (2d) 887, 84 S. Ct. 825, was 'credible' or his information 'reliable.'

> Otherwise, "'the inferences from the facts which lead to the complaint' will be drawn not 'by a neutral and detached magistrate,' as the Constitution requires, but instead, by a police officer 'engaged in the often competitive enterprise of ferreting out crime,' *Giordenello v. United States, supra,* 357 U. S. at 486, 2 L. Ed. (2d) at 1509; *Johnson v. United States, supra,* 333 U. S. at 14, 92 L. Ed. at 440, or, as in this case, by an unidentified informant."

In *U. S. v. Ventresca,* 380 U. S. 102, 85 S. Ct. 741, 13 L. Ed. (2d) 684, cited by Mr. Chief Justice Burger, with approval in *U. S. v. Harris,* 403 U. S. 573, 91 S. Ct. 2075, 29 L. Ed. (2d) 723, and in our *Bennett* case, it was said:

> "'The Fourth Amendment's commands, like all constitutional requirements, are practical and not abstract. If the teachings of the Court's cases are to be followed and the constitutional policy served, affidavits for search warrants, such as the one involved here, must be tested and interpreted by magistrates and courts in a commonsense and realistic fashion. They are normally drafted by the nonlawyers in the midst and haste of a criminal investigation. Technical requirements of elaborate specificity once exacted under common law pleadings have no proper place in this area. A grudging or negative attitude by reviewing courts toward warrants will tend to discourage police officers from submitting their evidence to a judicial officer before acting.'"

The affidavit for the search warrant in this case was made by one T. E. Clark of the Richland County Sheriff's Narcotics Squad. He avers that he has confidential and reliable information that there is a large quantity of marijuana located in a large two-story unpainted house just off of Highway 34 in the Simpson Community of Fairfield County, and the house is located between that of one Willie Raines and one C. Less Spirwell, and the post office address thereof is Box 193, Route 2, Ridgeway, South Carolina. The persons mentioned as having possession of the marijuana were Jimmy B. Williams and Jaye Hayes. The affi-

ant also averse that the above mentioned persons were known to him as dealers of marijuana. He further says that his confidential and reliable informant knows that there is a large quantity of marijuana stored at the above described location and that the informant knows this because Jimmy B. Williams, the appellant, told him about it and where he had it stored. He further says that the informant talked with the appellant within three days preceding the issuance of the search warrant and was at that time told where the marijuana was.

The trial judge conducted an evidentiary hearing to determine if the search of the house occupied by the appellant and the subsequent seizure of contraband marijuana was in violation of any of his constitutional rights. At this hearing T. E. Clark testified, without objection by the appellant, that when he appeared before the magistrate he was placed under oath by the magistrate and testified that this informant had on a previous occasion given him information as to the location of other marijuana and this information proved to be correct and reliable, resulting in the seizure of such marijuana and the arrest of the person in whose possession it was found.

The magistrate who issued the search warrant was also called as a witness by the State. He testified, without objection by the appellant, that T. E. Clark had given him, under oath, the testimony hereinbefore stated. The magistrate testified that he found that the informant's statement to the affiant was reliable and credible and based thereon found probable cause for the issuance of this search warrant.

The sworn testimony given by the witness Clark to the magistrate, prior to the issuance of the search warrant, advised him of the underlying circumstances indicating that the informant was reliable and credible. Accordingly, the magistrate found probable cause for the issuance of the search warrant.

The appellant never objected to the propriety of the magistrate's consideration of the sworn statements of the witness Clark in arriving at his conclusion that probable cause existed. On the contrary, counsel for the appellant

extensively cross examined the witness Clark and the magistrate about the statements made under oath without reserving any objection to the testimony. It follows that the question of the use of sworn oral statements in support of probable cause for the search warrant is not properly before this Court. The rule is well established that if asserted errors are not presented to the lower court the question cannot be raised for the first time on appeal. *State v. White*, 253 S. C. 475, 171 S. E. (2d) 712.

The record shows that the affiant, officer Clark, knew the informant well and had had previous dealings with him, and his past experience showed the informant to be reliable. All such facts were furnished to the magistrate on oath either in the affidavit or by sworn oral testimony. Since the appellant did not voice any objection in the court below to the sworn oral testimony supporting the magistrate's finding of probable cause, this question is not properly before us for consideration. In view of a lack of objection on the part of the appellant, it is unnecessary for us to determine whether the magistrate was limited, in determining probable cause, to the written affidavit taken under oath.

We hold that the affidavit and the supporting testimony heard by the issuing magistrate together was sufficient to support a finding of probable cause to issue the search warrant, and therefore the appellant's motion to exclude the evidence gained as a result of that search was properly denied.

The exceptions of the appellant are overruled and the judgment of the lower court is,

Affirmed.

THE SUPREME COURT OF SOUTH CAROLINA

March 4, 1974

Kale R. Alexander, Esquire
1321 Lady Street
Columbia, South Carolina

Re: The State v. Jimmy B. Williams

Dear Mr. Alexander:

The Court has this day refused your petition for rehearing in the above case in the following order:

"Petition Denied.

/s/ Joseph R. Moss C. J.

/s/ J. Woodrow Lewis A. J.

/s/ Thomas P. Bussey A. J.

/s/ J. M. Brailsford A. J.

/s/ Bruce Littlejohn A. J."

The remittitur is being sent down today.

Very truly yours,

FRANCES H. SMITH,
Clerk.

FHS:rm

cc: Solicitor William Hare
P. O. Box 838
Chester, South Carolina 29706

The Honorable Dudley Saleeby, Jr.
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